

109TH CONGRESS  
2D SESSION

# H. R. 5509

To amend the Internal Revenue Code of 1986 to clarify the tax credit  
for electricity produced from open-loop biomass.

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IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2006

Mr. NUNES introduced the following bill; which was referred to the Committee  
on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to clarify  
the tax credit for electricity produced from open-loop  
biomass.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CLARIFICATION OF CREDIT FOR ELECTRICITY**

4 **PRODUCED FROM OPEN-LOOP BIOMASS.**

5 (a) REMOVAL OF REQUIREMENT FOR SEGREGATION  
6 OF OPEN-LOOP BIOMASS FROM OTHER WASTE.—Clause  
7 (ii) of section 45(c)(3)(A) of the Internal Revenue Code  
8 of 1986 (defining open-loop biomass) is amended by strik-  
9 ing “which is segregated from other waste materials and”.

1 (b) LIMITATION BASED ON BIOMASS COFIRING WITH  
 2 NONQUALIFIED FUEL.—Subsection (b) of section 45 of  
 3 such Code (relating to limitations and adjustments) is  
 4 amended by adding at the end the following new para-  
 5 graph:

6 “(5) OPEN-LOOP BIOMASS COFIRED WITH NON-  
 7 QUALIFIED FUEL.—

8 “(A) IN GENERAL.—In the case of elec-  
 9 tricity produced by a facility described in sub-  
 10 section (d)(3), the credit determined under sub-  
 11 section (a) shall be the applicable percentage of  
 12 such credit, determined without regard to this  
 13 paragraph and after the application of para-  
 14 graphs (1), (3), and (4) of this subsection.

15 “(B) APPLICABLE PERCENTAGE.—For  
 16 purposes of subparagraph (A), the applicable  
 17 percentage is 100 percent, reduced by the num-  
 18 ber of percentage points of excess nonqualified  
 19 fuel consumption for the taxable year. In the  
 20 event the percentage points of excess non-  
 21 qualified fuel consumption exceeds 20 percent  
 22 in the taxable year, the credit under subsection  
 23 (a) shall be zero for that taxable year.

24 “(C) EXCESS NONQUALIFIED FUEL CON-  
 25 SUMPTION.—The term ‘excess nonqualified fuel

consumption’ means, with respect to any facility, the excess (if any) of the nonqualified fuel consumption percentage for such facility for the taxable year over 5 percent.

“(D) NONQUALIFIED FUEL CONSUMPTION PERCENTAGE.—The term ‘nonqualified fuel consumption percentage’ means, with respect to a facility described in subsection (d)(3), the ratio (expressed as a percentage) which the quantity of fuel which is not open-loop biomass consumed for a taxable year by such facility bears to the total fuel consumed by such facility for such taxable year.

“(E) DETERMINATION BASED ON WEIGHT.—For purposes of this paragraph, the determination of fuel consumed shall be based on the weight of such fuel.”.

(c) INCREMENTS OF ADDITIONAL CAPACITY.—Subparagraph (A) of section 45(d)(3) of such Code (defining open-loop biomass facilities) is amended by adding at the end the following new flush sentence: “Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this sentence, but only to the extent of the increased amount of electricity produced at the facility by

1 reason of such new unit. For purposes of subsection  
2 (b)(5), the new unit shall be treated as a separate facil-  
3 ity.”.

4 (d) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to electricity produced and sold  
6 after December 31, 2004.

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